

Representative Brad R. Wilson proposes the following substitute bill:

ADOPTION ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill amends provisions of Title 78B, Chapter 6, Part 1, Utah Adoption Act, relating to the rights and obligations of individuals in relation to the adoption of a child.

Highlighted Provisions:

This bill:

- ▶ provides that if a birth mother has not resided in the state for 90 total days or more:
 - the birth mother shall file with the court a declaration regarding each potential birth father;
 - the court may, based on the declaration regarding the potential birth father, order the birth mother to serve a potential birth father notice that she intends to consent to adoption or relinquishment of the child for adoption; and
 - the potential birth father's consent is required, in accordance with certain provisions of the Utah Adoption Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **78B-6-110**, as last amended by Laws of Utah 2013, Chapter 458

28 ENACTS:

29 **78B-6-110.5**, Utah Code Annotated 1953

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **78B-6-110** is amended to read:

33 **78B-6-110. Notice of adoption proceedings.**

34 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
35 sexual relationship with a woman:

36 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
37 the child may occur; and

38 (ii) has a duty to protect his own rights and interests.

39 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
40 proceeding with regard to his child only as provided in this section or Section **78B-6-110.5**.

41 (2) Notice of an adoption proceeding shall be served on each of the following persons:

42 (a) any person or agency whose consent or relinquishment is required under Section
43 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

44 (i) waiver;

45 (ii) relinquishment;

46 (iii) actual consent, as described in Subsection (12); or

47 (iv) judicial action;

48 (b) any person who has initiated a paternity proceeding and filed notice of that action
49 with the state registrar of vital statistics within the Department of Health, in accordance with
50 Subsection (3);

51 (c) any legally appointed custodian or guardian of the adoptee;

52 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
53 petition;

54 (e) the adoptee's spouse, if any;

55 (f) any person who, prior to the time the mother executes her consent for adoption or
56 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with

57 the knowledge and consent of the mother;

58 (g) a person who is:

59 (i) openly living in the same household with the child at the time the consent is
60 executed or relinquishment made; and

61 (ii) holding himself out to be the child's father; and

62 (h) any person who is married to the child's mother at the time she executes her consent
63 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
64 spouse is not the child's father under Section 78B-15-607.

65 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
66 consistent with Subsection (3)(d):

67 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
68 Chapter 15, Utah Uniform Parentage Act; and

69 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
70 with the office of vital statistics within the Department of Health.

71 (b) If the unmarried, biological father does not know the county in which the birth
72 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
73 Section 78B-3-307.

74 (c) The Department of Health shall provide forms for the purpose of filing the notice
75 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
76 health department in each county.

77 (d) When the state registrar of vital statistics receives a completed form, the registrar
78 shall:

79 (i) record the date and time the form was received; and

80 (ii) immediately enter the information provided by the unmarried biological father in
81 the confidential registry established by Subsection 78B-6-121(3)(c).

82 (e) The action and notice described in Subsection (3)(a):

83 (i) may be filed before or after the child's birth; and

84 (ii) shall be filed prior to the mother's:

85 (A) execution of consent to adoption of the child; or

86 (B) relinquishment of the child for adoption.

87 (4) Notice provided in accordance with this section need not disclose the name of the

88 mother of the child who is the subject of an adoption proceeding.

89 (5) The notice required by this section:

90 (a) may be served at any time after the petition for adoption is filed, but may not be
91 served on a birth mother before she has given birth to the child who is the subject of the
92 petition for adoption;

93 (b) shall be served at least 30 days prior to the final dispositional hearing;

94 (c) shall specifically state that the person served shall fulfill the requirements of
95 Subsection (6)(a), within 30 days after the day on which the person receives service if the
96 person intends to intervene in or contest the adoption;

97 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
98 to file a motion for relief within 30 days after the day on which the person is served with notice
99 of an adoption proceeding;

100 (e) is not required to include, nor be accompanied by, a summons or a copy of the
101 petition for adoption; and

102 (f) shall state where the person may obtain a copy of the petition for adoption.

103 (6) (a) A person who has been served with notice of an adoption proceeding and who
104 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

105 (i) within 30 days after the day on which the person was served with notice of the
106 adoption proceeding;

107 (ii) setting forth specific relief sought; and

108 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
109 which the motion is based.

110 (b) A person who fails to fully and strictly comply with all of the requirements
111 described in Subsection (6)(a) within 30 days after the day on which the person was served
112 with notice of the adoption proceeding:

113 (i) waives any right to further notice in connection with the adoption;

114 (ii) forfeits all rights in relation to the adoptee; and

115 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
116 the adoptee.

117 (7) Service of notice under this section shall be made as follows:

118 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary

119 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
120 Rules of Civil Procedure.

121 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
122 shall designate the content of the notice regarding the identity of the parties.

123 (iii) The notice described in this Subsection (7)(a) may not include the name of a
124 person seeking to adopt the adoptee.

125 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
126 is required under this section, service by certified mail, return receipt requested, is sufficient.

127 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
128 attempts, the court may issue an order providing for service by publication, posting, or by any
129 other manner of service.

130 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
131 action with the state registrar of vital statistics in the Department of Health in accordance with
132 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
133 the last address filed with the registrar.

134 (8) The notice required by this section may be waived in writing by the person entitled
135 to receive notice.

136 (9) Proof of service of notice on all persons for whom notice is required by this section
137 shall be filed with the court before the final dispositional hearing on the adoption.

138 (10) Notwithstanding any other provision of law, neither the notice of an adoption
139 proceeding nor any process in that proceeding is required to contain the name of the person or
140 persons seeking to adopt the adoptee.

141 (11) Except as to those persons whose consent to an adoption is required under Section
142 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
143 served to:

144 (a) intervene in the adoption; and

145 (b) present evidence to the court relevant to the best interest of the child.

146 (12) In order to be excused from the requirement to provide notice as described in
147 Subsection (2)(a) on the grounds that the person has provided consent to the adoption
148 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described
149 in Section 78B-6-120.1.

150 Section 2. Section 78B-6-110.5 is enacted to read:

151 **78B-6-110.5. Out-of-state birth mothers and adoptive parents -- Declaration**
152 **regarding potential birth fathers.**

153 (1) (a) For a child who is six months of age or less at the time the child is placed with
154 prospective adoptive parents, if, at any point during the time period beginning at the conception
155 of the child and ending at the time the mother executes consent to adoption or relinquishment
156 of the child for adoption, the birth mother or at least one of the adoptive parents has not resided
157 in the state for 90 total days or more, as described in Subsection (1)(c), the birth mother shall
158 file with the court a declaration regarding each potential birth father, in accordance with this
159 section, before or at the time a petition for adoption is filed with the court.

160 (b) The birth mother shall search the putative father registry of each state where the
161 birth mother believes the child may have been conceived and each state where the birth mother
162 lived during her pregnancy, if the state has a putative father registry, to determine whether a
163 potential birth father registered with the state's putative father registry.

164 (c) In determining whether the 90-day requirement is satisfied, the following apply:

165 (i) the 90 days are not required to be consecutive;

166 (ii) no absence from the state may be for more than seven consecutive days;

167 (iii) any day on which the individual is absent from the state does not count toward the
168 total 90-day period; and

169 (iv) the 90-day period begins and ends during a period that is no more than 120
170 consecutive days.

171 (2) The declaration filed under Subsection (1) regarding a potential birth father shall
172 include, for each potential birth father, the following information:

173 (i) if known, the potential birth father's name, date of birth, Social Security number,
174 and address;

175 (ii) with regard a state's putative father registry in each state described in Subsection

176 (1)(b):

177 (A) whether the state has a putative father registry; and

178 (B) for each state that has a putative father registry, with the declaration, a certificate or
179 written statement from the state's putative father registry that a search of the state's putative
180 father registry was made and disclosing the results of the search;

- 181 (iii) whether the potential birth father was notified of:
182 (A) the birth mother's pregnancy;
183 (B) the fact that he is a potential birth father; or
184 (C) the fact that the birth mother intends to consent to adoption or relinquishment of
185 the child for adoption, in Utah;
186 (iv) each state where the birth mother lived during the pregnancy;
187 (v) if known, the state in which the child was conceived;
188 (vi) whether the birth mother informed the potential birth father that she was traveling
189 to or planning to reside in Utah;
190 (vii) whether the birth mother has contacted the potential birth father while she was
191 located in Utah;
192 (viii) whether, and for how long, the potential birth father has ever lived with the child;
193 (ix) whether the potential birth father has given the birth mother money or offered to
194 pay for any of her expenses during pregnancy or the child's birth;
195 (x) whether the potential birth father has offered to pay child support;
196 (xi) if known, whether the potential birth father has taken any legal action to establish
197 paternity of the child, either in Utah or in any other state, and, if known, what action he has
198 taken; and
199 (xii) whether the birth mother has ever been involved in a domestic violence matter
200 with the potential birth father.
201 (3) Based on the declaration regarding the potential birth father, the court shall order
202 the birth mother to serve a potential birth father notice that she intends to consent or has
203 consented to adoption or relinquishment of the child for adoption, if the court finds that the
204 potential birth father:
205 (i) has taken sufficient action to demonstrate an interest in the child;
206 (ii) has taken sufficient action to attempt to preserve his legal rights as a birth father,
207 including by filing a legal action to establish paternity or filing with a state's putative father
208 registry; or
209 (iii) does not know, and does not have a reason to know, that:
210 (A) the mother or child are present in Utah;
211 (B) the mother intended to give birth to the child in Utah;

212 (C) the child was born in Utah; or

213 (D) the mother intends to consent to adoption or relinquishment of the child for
214 adoption in Utah.

215 (4) Notice under this section shall be made in accordance with Subsections

216 [76B-6-110](#)(7) through (12).